

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Case No. 09-2004-156158

ULYSSES M. CARBAJAL, M.D.

**Physician's and Surgeon's
Certificate #A 16695**

Respondent.

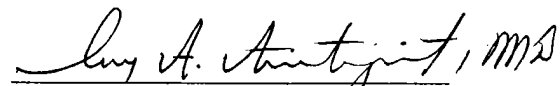
DECISION AND ORDER

The attached Stipulated Suspension and Order is hereby accepted and adopted as the Decision and Order by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 27, 2006.

IT IS SO ORDERED June 27, 2006

MEDICAL BOARD OF CALIFORNIA



**Cesar Aristeiguieta, M.D. Chair
Chair, Panel A
Division of Medical Quality**

1 BILL LOCKYER, Attorney General
of the State of California
2 SANFORD H. FELDMAN, State Bar No. 47775
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
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6 Telephone: (619) 645-2079
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8 Attorneys for Complainant

9 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 09-2004-156158

13 ULYSSES M. CARBAJAL, M.D.
418 W. Third Street
14 Azusa, CA 91702

15 1189 West Arrow Highway
Azusa, CA 91702

16 Physician's and Surgeon's
17 Certificate No. A 16695

**STIPULATED SUSPENSION
AND ORDER**

18 Respondent.
19

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
21 above-entitled proceedings that the following matters are true:

22 PARTIES

23 1. David T. Thornton (Complainant) is the Executive Director of the Medical
24 Board of California. He brought this action solely in his official capacity and is represented in
25 this matter by Bill Lockyer, Attorney General of the State of California, by Sanford H. Feldman,
26 Deputy Attorney General.

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2. Respondent ULYSSES M. CARBAJAL, M.D. is represented in this proceeding by attorney Peter Osinoff, Esq., whose address is Bonne Bridges Mueller O’Keefe & Nichols, 3699 Wilshire Boulevard, 10th Floor, Los Angeles, CA 90010.

3. On or about November 16, 1955, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 16695 to ULYSSES M. CARBAJAL, M.D. (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 09-2004-156158 and will expire on August 31, 2006, unless renewed.

JURISDICTION

4. Accusation No. 09-2004-156158 was filed before the Division of Medical Quality (Division) for the Medical Board of California, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 12, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 09-2004-156158 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 09-2004-156158. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Suspension and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in
3 Accusation No. 09-2004-156158, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate A 16695.

5 9. For the purpose of resolving the Accusation without the expense and
6 uncertainty of further proceedings, Respondent, respondent admits that he suffers from a hearing
7 loss that affects his ability to practice medicine safely.

8 10. Respondent agrees that his Physician's and Surgeon's Certificate A 16695
9 is subject to discipline and suspension and agrees to be bound by the Division's Order below.

10 CONTINGENCY

11 11. This stipulation shall be subject to approval by the Division of Medical
12 Quality. Respondent understands and agrees that counsel for Complainant and the staff of the
13 Medical Board of California may communicate directly with the Division regarding this
14 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
15 signing the stipulation, Respondent understands and agrees that he may not withdraw his ,
16 agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon
17 it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
18 Suspension and Order shall be of no force or effect, except for this paragraph, it shall be
19 inadmissible in any legal action between the parties, and the Division shall not be disqualified
20 from further action by having considered this matter.

21 12. The parties understand and agree that facsimile copies of this Stipulated
22 Suspension and Order, including facsimile signatures thereto, shall have the same force and
23 effect as the originals.

24 13. In consideration of the foregoing admissions and stipulations, the parties
25 agree that the Division may, without further notice or formal proceeding, issue and enter the
26 following Order:

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six months after respondent's initial enrollment unless the Division or its designee agrees in writing to a later time for completion.

2. Should Respondent ever apply for modification or termination of suspension or reapply for a new license or certification from the Board or any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 09-2004-156158 shall be deemed to be true, correct, and fully admitted by respondent.

ACCEPTANCE

I have carefully read the above Stipulated Suspension and Order and have fully discussed it with my attorney, Peter Osinoff, Esq. I understand the stipulation and the effect it

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1 will have on my Physician's and Surgeon's Certificate A 16695. I enter into this Stipulated
2 Suspension and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
3 Decision and Order of the Division.

4 DATED: 2/27/06

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8 ULYSSES M. CARBAJAL, M.D.
Respondent

9 I have read and fully discussed with Respondent ULYSSES M. CARBAJAL,
10 M.D. the terms and conditions and other matters contained in the above Stipulated Suspension
11 and Order. I approve its form and content.

12 DATED: 2/28/06

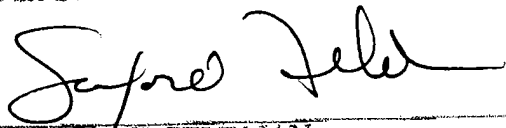
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14 
15 PETER OSINOFF, Esq.
16 Attorney for Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Suspension and Order is hereby respectfully submitted
19 for consideration by the Division of Medical Quality, Medical Board of California of the
20 Department of Consumer Affairs.

21 DATED: 2/28/06

22 BILL LOCKYER, Attorney General
of the State of California

23 
24 SANFORD H. FELDMAN
25 Deputy Attorney General

26 Attorneys for Complainant

27 DOJ Matter ID: SD2005701063
28 80062729.wpd

Exhibit A

Accusation No. 09-2004-156158

1 BILL LOCKYER, Attorney General
of the State of California
2 SANFORD H. FELDMAN, State Bar No. 47775
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

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6 Telephone: (619) 645-2079
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 ULYSSES M. CARBAJAL, M.D.
1189 West Arrow Highway
14 Azusa, CA 91702

15 Physician's and Surgeon's
Certificate No. A 16695

16 Respondent.
17

Case No. 09-2004-156158

OAH No.

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

20 1. David T. Thornton (Complainant) brings this Accusation solely in his
21 official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs.

23 2. On or about November 16, 1955, the Medical Board of California issued
24 Physician's and Surgeon's Certificate No. A 16695 to ULYSSES M. CARBAJAL, M.D.
25 (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times
26 relevant to the charges brought herein and unless renewed, the license will expire on August 31,
27 2006.

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 12, 20 05
BY Valerie M. Oa ANALYST

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1 conduct departs from the applicable standard of care, each departure constitutes a separate
2 and distinct breach of the standard of care.

3 "(d) Incompetence.

4 "(e) The commission of any act involving dishonesty or corruption which is
5 substantially related to the qualifications, functions, or duties of a physician and surgeon.

6 "(f) Any action or conduct which would have warranted the denial of a certificate.

7 "(g)

8 6. Section 2266 the Code states:

9 "The failure of a physician and surgeon to maintain adequate and accurate records
10 relating to the provision of services to their patients constitutes unprofessional conduct."

11 7. Section 822 of the Code states:

12 "If a licensing agency determines that its licensee's ability to practice his or her
13 profession safely is impaired because the licensee is mentally ill, or physically ill
14 affecting competency, the licensing agency may take action by any one of the following
15 methods:

16 (a) Revoking the licensee's certificate or license.

17 (b) Suspending the licensee's right to practice.

18 (c) Placing the licensee on probation.

19 (d) Taking such other action in relation to the licensee as the licensing agency in
20 its discretion deems proper.

21 The licensing agency shall not reinstate a revoked or suspended certificate or
22 license until it has received competent evidence of the absence or control of the condition
23 which caused its action and until it is satisfied that with due regard for the public health
24 and safety the person's right to practice his or her profession may be safely reinstated.

25 8. Section 125.3 of the Code provides, in pertinent part, that the Division
26 may request the administrative law judge to direct a licensee found to have committed a
27 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
28 investigation and enforcement of the case.

1 9. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
2 part:

3 “(a) Upon receipt of written notice from the Medical Board of California, the
4 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
5 that a licensee's license has been placed on probation as a result of a disciplinary action,
6 the department may not reimburse any Medi-Cal claim for the type of surgical service or
7 invasive procedure that gave rise to the probation, including any dental surgery or
8 invasive procedure, that was performed by the licensee on or after the effective date of
9 probation and until the termination of all probationary terms and conditions or until the
10 probationary period has ended, whichever occurs first. This section shall apply except in
11 any case in which the relevant licensing board determines that compelling circumstances
12 warrant the continued reimbursement during the probationary period of any Medi-Cal
13 claim, including any claim for dental services, as so described. In such a case, the
14 department shall continue to reimburse the licensee for all procedures, except for those
15 invasive or surgical procedures for which the licensee was placed on probation.”

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Gross Negligence)**

18 10. Respondent is subject to disciplinary action under Code section 2234(b) in
19 that he was grossly negligent in connection with the care, treatment and management of patient
20 Vanessa G. The circumstances are set forth below.

21 11. On or about January 23, 2003, patient Vanessa G., a 23-year-old female,
22 first presented to respondent, an ophthalmology and otolaryngology specialist. She complained
23 of vertigo that had not been resolved by her general practitioner. Even though Vanessa G.
24 presented with a complaint of vertigo, respondent failed to perform an audiogram, a
25 tympanogram and an electronystagmogram. In addition, respondent failed to order a CT scan to
26 rule out 8th nerve tumors.

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1 12. On or about June 19, 2003, respondent performed bilateral tympanostomy
2 with tubes, drainage of tonsillar abscess and a tonsillectomy even though there was no medical
3 indication for the procedures.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Repeated Negligent Acts)**

6 13. Respondent is subject to further disciplinary action under Code section
7 2234(c) in that he committed repeated acts of negligence in connection with the care, treatment
8 and management of patient Vanessa G. The circumstances are set forth below.

9 14. Paragraphs 11 and 12 above are incorporated herein by reference as if fully
10 set forth.

11 15. On or about January 30, 2003, Vanessa G. presented to respondent with
12 continued complainants of dizziness. Even though she did not complain of throat problems and
13 even though her throat culture was reported as negative, respondent prescribed Keflex without
14 medical indication.

15 16. On or about May 9, 2003 and January 11, 2004, Vanessa G. again
16 presented to respondent. Respondent again prescribed Keflex to Vanessa G. even though there
17 was no medical indication for the prescription.

18 17. On or about August 1, 2003, Vanessa G. presented to respondent with
19 continued complainants of dizziness. Respondent noted exudate from the left tympanic
20 membrane and tenderness by the left mastoid. Respondent prescribed gentamycin drops even
21 though they were contraindicated.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Incompetence)**

24 18. Respondent is subject to further disciplinary action under Code section
25 2234(d) in that he was incompetent in connection with his care, treatment and management of
26 patient Vanessa G. as set forth in paragraphs 11-12 and 15-17 above, which are incorporated
27 herein by reference as if fully set forth.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

19. Respondent is subject to further disciplinary action under Code section 2266 in that he failed to maintain adequate and accurate records in connection with the care, treatment and management of patient Vanessa G. The circumstances are set forth below.

20. Paragraphs 10-18 above are incorporated herein by reference as if fully set forth.

21. On or about January 23, 2003, respondent failed to document an adequate history and physical, failed to describe the frequency of the tuning forks used and failed to give an estimate of decibels of hearing.

22. On or about January 30, February 13, February 24, April 10, April 24, May 29, June 11 and June 19, 2003, respondent failed to note a working diagnosis.

23. On or about February 24, 2003, respondent failed to document the diagnosis upon which he based his scheduling of patient Vanessa G.'s mastoid series.

FIFTH CAUSE FOR ACTION

(Physical Impairment)

24. Respondent is subject to further action under Code section 822 in that he suffers from a hearing loss that impairs his ability to practice medicine safely.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A 16695, issued to ULYSSES M. CARBAJAL, M.D.;
2. Revoking, suspending or denying approval of ULYSSES M. CARBAJAL, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
3. Ordering ULYSSES M. CARBAJAL, M.D. to pay the Division of Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

1 4. Taking action as authorized by section 822 of the Code, as the Division, in
2 its discretion, deems necessary and proper;

3 5. Taking such other and further action as deemed necessary and proper.

4 DATED: September 12, 2005

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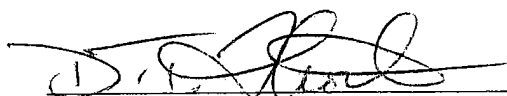
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DAVID T. THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant